



TOWN OF SWAMPSCOTT
SOLID WASTE ADVISORY COMMITTEE

22 Monument Avenue
Swampscott, MA 01907

PLASTICS REGULATION IN FOOD ESTABLISHMENTS

A Proposed Bylaw for
2023 Special Town Meeting

OCTOBER 11, 2023

PLASTICS REGULATION IN FOOD ESTABLISHMENTS

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Section I: Purpose and Intent

This bylaw is enacted for the purpose of reducing the distribution of food service ware and food service ware accessories that are not compostable, recyclable or reusable. The production and use of the items restricted by this bylaw have significant impacts on the environment, including but not limited to: contribution to pollution of the land environment; creating a burden to solid waste and recycling facilities; entering storm drains that empty into waterways leading to the ocean, causing potential harm to marine animals; and requiring billions of gallons of crude oil nationally for their manufacture.

Section II: Definition

Compostable: A characteristic of a product that can disintegrate into non-toxic, natural elements at a rate consistent with organic materials. A compostable product will require microorganisms, humidity, and heat to yield a finished compost product (carbon dioxide, water, inorganic compounds, and biomass).

Food Establishment: For purposes of this bylaw, a Food Establishment is an operation defined per 105 CMR 590.001 (State Sanitary Code; Minimum Standards for Food Establishments).

Materials Recovery Facility (MRF): A specialized plant that receives, separates and prepares recyclable materials for sale to end-user manufacturers. A MRF may also be defined as a materials reclamation facility, materials recycling facility or a multi re-use facility).

Municipal Solid Waste: Waste that is not recyclable and that is ultimately transported to either a landfill or a facility for incineration.

Online Food Ordering Platform: A website or mobile application through which a consumer can place an order for pickup or delivery of prepared food. Such platforms include, but may not be limited to, those operated directly by food establishments, by companies that provide delivery of prepared meals to consumers, and by online food ordering systems that connect consumers to prepared food vendors directly.

High-Density Polyethylene (HDPE): A common, highly stable, thermoformable plastic polymer used to make containers that require impact strength, chemical resistance, and longevity. It may be labeled "plastic No. 2"

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Low-Density Polyethylene (LDPE): A very common, highly stable and thermoplastic polymer used to make thin films used for plastic bags and other light duty requirements. It may be labeled "plastic No. 4."

Per- and polyfluoroalkyl substances (PFAS) are a class of 12,000 large complex groups of fluorinated synthetic chemicals added to products like food packaging to enhance their grease resistant, waterproof, non-stick, and stainproof qualities. Because they do not breakdown in nature these chemicals become bio-accumulative and ultimately harmful in humans, wildlife, and the environment. Packaging that contains PFAS can leach into food & beverage products thereby directly exposing them to humans during food consumption. It can also leach into the food supply if such packaging is composted.

Polyethylene Terephthalate (PET or PETE): A common thermoplastic polymer widely used to make packaging for foods and beverage products. It is commonly used to make single use bottles for water and other liquids. It may be labeled "plastic No. 1."

Polypropylene (PP): A synthetic plastic polymer used to make food containers, disposable cutlery, plastic straws, and other products. It may be labeled "plastic No. 5."

Polystyrene (PS or EPS): A common inexpensive plastic polymer known for its strength and flexibility. It is often used to make food containers, cups, utensils, and other products. This material can also be offered as Expanded Polystyrene (EPS) or Styrofoam that is generally comprised of 98% air. EPS is often used to insulate hot or cold liquids and food items. It may be labeled "plastic No. 6."

Polyvinyl Chloride (PVC): A common inexpensive plastic polymer known for its rigidity and strength. It can be used to make plastic straws and utensils, and other products. It may be labeled "plastic No. 3."

Prepared Food: Any food or beverage prepared by a Food Establishment and offered for sale in the Town of Swampscott.

Recyclable: Material that can be sorted, cleansed, and reconstituted by Swampscott's municipal recycling collection program(s) for the purpose of use in the manufacture of a new product. "Recycling" does not include thermally destroying or converting solid waste.

Reusable: Products that are designed to be used more than once in the same form by a food or retail establishment (e.g., dishes that may be placed in a dishwasher, washed, and used again).

Single-Use Container: Nondurable disposable containers holding food or beverages distributed to customers with the intent of a single use, whether used for on-premises or off-premises dining services, takeout, or delivery. This includes containers, bowls, plates, trays, cartons, cups, lids, cans, sleeves, and other items designed for one-time or nondurable uses in which any food establishment directly places or packages prepared foods.

Single-Use Food Serveware: Items provided by the Food Establishment in relation to consuming a meal or beverage with the intent of a single use. This includes but not limited utensils, forks, knives, spoons, sporks, or chopsticks. Excluded are wooden toothpicks and paper napkins. This does not include items that are necessary for the containment of foods, such as plates, bowls, beverage cups, and bags.

Single-Use Condiment Packages: Disposable single use packets made from plastic or foil containing liquid for consumption and including, but not limited to salad dressings, ketchup, mustard, mayonnaise, duck sauce, and soy sauce.

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Section III: General Prohibition and Regulation

1. Food establishments as defined in Section II operating in the Town of Swampscott that provide or offer prepared food to customers in Single Use Containers shall be required to comply with this bylaw. Pre-packaged items not prepared at the location of sale are not regulated by this bylaw.
2. Food Establishments that offer single use containers for takeout, leftovers, delivery, or other means for which the food or beverage will be consumed off premises, shall provide a container constructed of materials as regulated in Section V.
3. Food establishments where prepared food may be consumed on premises and served in Single Use containers that are recyclable and regulated in Section V shall
 - a. Offer a recycling collection receptacle in addition to trash receptacles; and
 - b. Contract with a recycling service vendor to remove recyclable materials. Recyclable materials shall be separated from other “municipal solid waste” destined for landfill or incineration.
4. Food establishments that offer **Single Use Food Serviceware** and **Single-Use Condiment Packages** as defined in Section II, may offer but shall only provide such items upon agreement or request by customers, or at a self-serve station.
5. Food establishments operating in the Town of Swampscott and that participate in online food ordering platforms shall, when such option is available, provide the option to customers to proactively request disposable food service ware with a food order. If an option is available to the customer but the customer does not indicate a preference, restaurants shall not include disposable food service ware with the order.
6. The BOH or its designee shall provide to food establishments succinct materials explaining the requirements of this bylaw and recommendations for proper solid waste stream procedure.

Section IV: Exemptions

1. The Board of Health (BOH) may exempt a food establishment from the requirements of this section for a period of up to one year upon a finding by the BOH that such requirements would cause undue hardship to the food establishment.
 - a. Any food establishment seeking an exemption shall apply to the BOH using forms provided by the Health Department, and shall allow the BOH to access all information supporting its application.
 - b. The BOH may approve an exemption request, in whole or in part, with or without conditions.
 - c. The BOH may establish a fee for exemption requests
2. The BOH may approve additional six-month periods upon the showing of a continued undue hardship.
3. An "undue hardship" shall only be found in:
 - a. Circumstances or situations unique to a food establishment such that there are no reasonable alternatives to materials banned in this section that are necessary to the establishment's operations;
 - b. Circumstances or situations unique to a food establishment such that compliance with the requirements of this section would deprive a person of a legally protected right; or
 - c. Circumstances in which a food establishment requires additional time in order to draw down an existing inventory of plastic products or materials banned in this section.
4. Other exemptions:
 - a. Pharmaceutical containers
 - b. Single-use containers provided to residents during a declared public health emergency or natural disaster

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Section V: Material Specifications

1. Single-use containers composed of the following materials are prohibited for use by food establishments:
 - a. Polystyrene or Expanded Polystyrene “styrofoam”
 - b. PVC- Polyvinyl Chloride
 - c. LDPE – Low Density Polyethylene
 - d. Any plastic material in the color black.
 - e. Any plastic labeled as #7, “Other”, or generally not accepted for curbside recycling in the Commonwealth of Massachusetts.
 - f. Containers intentionally adding the PFAS family of fluorinated “forever chemicals” for the purpose of enhancing its product performance.
2. Single-use containers composed of PET/PETE materials are restricted for use by food establishments:
 - a. To prevent chemicals leaching into food, this material shall not be used to serve or store hot food or beverages.
 - b. Shall not be manufactured from any post-consumer recycled PET plastic.
3. Thin film transparent plastic “wrap” shall not be restricted when used to seal food, beverages, or the containers that carry them.
4. Any container that is labeled as Compostable must have one of the following certifications clearly marked on the container to assure that the material has been tested for compostability and specific contaminant limitations.
 - a. BPI (Biodegradable Products Institute)
 - b. TUV / OK Compost Industrial
 - c. CMA (Compost Manufacturing Alliance)
5. As materials technology, recycling processes, recycling vendors, states of emergency, and state and federal regulation can change from time to time, the Board of Health is authorized to:
 - a. Modify, add, or remove specific regulated materials to this section
 - b. Add or remove certification organizations and standards.
 - c. This authority shall be temporary and last no longer than 9 months.
 - d. Any conflicts with regard to state law or regulatory agencies shall defer to the authority of the more restrictive regulation.

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Section VI: Consumer Advisory:

If a food establishment offers single use plastic containers for takeout or delivery, the establishment shall display to notify their customers with the following written statement:

“Per guidance of the Swampscott Board of Health, to avoid the possible transfer of chemicals from plastic containers at cooking temperatures, it is not recommended to re-heat food while in direct contact with plastic containers.”

This verbiage can be placed on the menu, the payment receipt, attached to the single use plastic takeout container, or any other communication method approved by the Director of Public Health or the Board of Health.

Section VII: Enforcement

1. This Bylaw may be enforced by any agents of the Board of Health. This Bylaw may be enforced through any lawful means in law or in equity, including, but not limited to, non-criminal disposition pursuant to G.L. c.40, §21D and Article XII of the Town’s General Bylaws.
2. If non-criminal disposition is elected, then any Business Establishment which violates any provision of this regulation shall be subject to the following penalties:
 - First Offense: Written warning
 - 2nd Offense: \$50 fine
 - 3rd Offense: \$100 fine
 - 4th and Subsequent Offenses: \$300 fine

Section VIII: Severability

If any provision or section of this section shall be held to be invalid, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this section, which shall remain in full force and effect.